

Post Office Box 1680, GPO  
Brooklyn, NY 11202

Date: APR 12 1990

Person to Contact:

Contact Telephone Number:

Refer Reply to:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that the Corporation was incorporated in the [REDACTED] on [REDACTED].

- The Corporation is a Co-operative of Artists and its purposes are to provide educational and charitable services within the meaning of section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended, through the [REDACTED] promotion of the arts, particularly the visual arts, but also the literary, musical, and performing arts.

The organization's membership consist of the following:

Gallery Artists. Joiner's fee is \$[REDACTED] and monthly dues are \$[REDACTED]. They are entitled to a four week solo show within approximately 18 months of joining, and may participate in group and exchange shows that are organized through the gallery. Each artist maintains an artists book with slides and back-up information made available to curators, critics and the public, by the Director. Gallery Artists share gallery administration duties, attend monthly business meetings, gallery sit, and participate in other miscellaneous activities that are planned.

Auxiliary Artists, like Gallery Artists, is open to artists who work in all disciplines, including New Genres, Installations, Film, Video, and Crafts (crafts are not considered for Gallery Artists). Auxiliary Artists status has been created as an alternative to Gallery Artists status for artists who wish to exhibit in a visibility area, but due to location, time, money, or nature of their work feel that Gallery Artists status is inappropriate. Dues of \$[REDACTED] entitles the Auxiliary Artists to a four week solo show in the "[REDACTED]" scheduled at the artists/gallery's choice. Auxiliary Artist receive copy only in the Gallery Guide, and their slides, resume and other pertinent information is made available to the public and buyers, by the Director, for one year from the solo show. With the exception of assisting in hanging of their show and cleaning up at its end, no further responsibilities are required.

Associate Artists are similar in every way to Auxiliary Artists, except for a lesser fee, \$ [REDACTED] which entitles the Associate Artists to a four week group show (2-4 person) in the "[REDACTED]".

The organization's activities consist of sponsoring events, such as exhibits, performance and musical events and literary readings. All are open free to the public, but works of member artists may be purchased at prices specified by the said artists.

Financial information submitted by the organization indicates that its support is from membership fees, membership invitation fees, commissions on sale of artworks, gallery rental fees, tenant's rent and miscellaneous income. Its disbursements are for artists commission, advertising, rent, taxes, electricity, telephone, postage, copying, opening supplies, director's fees, supplies, miscellaneous, insurance and printing.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" includes relief of the poor and distressed, advancement of education and science and the promotion of social welfare designed to accomplish any of the above purposes.

Section 1.501(c)(3)-1(d)(3) of the Regulations provides, in part, that the term "educational" relates to the instruction of the public on subjects useful to the individual and beneficial to the community. Museums and schools are included in the examples of educational organizations which, if they otherwise meet the requirements of section 501(c)(3) of the Code, may qualify under this section.

Section 1.501(c)(3)-1(b)(4) of the Regulations states that "an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders."

Revenue Ruling 71-395, 1971-2 C.B. 228 states that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under section 501(c)(3) of the Code because it was engaged in showing and selling only the works of its own members and was a vehicle for advancing its members' careers and promoting the sale of their work. The gallery serves the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects.

In Revenue Ruling 76-152, 1976-1 C.B. 151, a group of art patrons formed an organization to promote community understanding of modern art trends. Its sole activity was to select modern art works of local artists for exhibit at its gallery and for possible sale. The gallery was open to the general public. A modern art work of any local artist is eligible for consideration for exhibition. If selected, the artist's work is displayed on a consignment basis with the artist setting the selling price. The artists have no control over the organization or its selection process. The organization retains a ten percent commission on sales which were substantially less than customary commercial charges and were not sufficient to recover the cost of operating the gallery. The organization attempted to make up operating deficits by soliciting contributions from the general public. It was held that the organization does not qualify for exemption under section 501(c)(3) of the Code because the artists were being directly benefited by the exhibition and sale of their works, with the result that a major activity of the organization is serving the private interests of those artists whose work are displayed for sale.

Revenue Ruling 66-178, 1966-1 C.B. 138, holds that an organization that fosters and develops the arts by sponsoring a public art exhibit at which the works of unknown but promising artists are gratuitously displayed may qualify for exemption under section 501(c)(3) of the Code. The organization does not sell or offer the displayed works for sale.

As in Revenue Rulings 71-395 and 76-152, this organization is being used as a vehicle for advancing its members' careers and promoting the sale of their works. The artists are being directly benefited by the exhibition and sale of their works, with the result that a major activity of the organization is serving the private interests of those artists whose works are displayed for sale. Therefore, your organization is not operated exclusively for 501(c)(3) purposes.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.


If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

A solid black rectangular box used to redact the signature of the District Director.

District Director

Enclosure: Publication 892